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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,670	08/25/2006	Stephen Cowan	2471.0040000	3798

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EXAMINER	
CHERIYAN JR, THOMAS K	
ART UNIT	PAPER NUMBER
3714	
MAIL DATE	DELIVERY MODE
02/22/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/590,670	COWAN ET AL.	
	Examiner	Art Unit	
	THOMAS K. CHERIYAN JR	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 August 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/17/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5, 6, 16, 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Looking at the equation as stated by the applicant, there is no mention in the specification about the range of values of what the control variable Q would be. Using a value of 0 [zero], the equation becomes indefinite and does not work. The specification also does not teach how one ordinary skilled in the art of gaming would calculate the value of Q. Though examples are provided, there is not enough disclosure to for one ordinary skilled in the art to figure out what the applicant is trying to claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crumby (US 6471591 B1) in view of Tracy (US 5116055).

Regarding claims 1, 12, 23, Crumby discloses a method of allocating a player's contribution **(Figure 2, Prize Pool 242a)** in a gaming apparatus between a plurality of games **(Figure 2, Gaming Terminals 210d, 210e)**, the method comprising:

a) receiving a contribution from a user **(Crumby, Abstract. It should be noted that all gaming machines used in casino establishments obviously receive a contribution or wager from a user)**;

b) splitting the contribution into a number of parts in accordance with a predetermined ratio **(Crumby, Abstract. "Pools" is where the contribution is being sent to and it would be obvious that the contributions can be split up among more than one pool.)**;

c) allocating at least one of the parts of the contribution to one of the games **(Crumby, Abstract. "Pools" is where the contribution is being sent to and it would be obvious that the contributions can be split up among more than one pool.)**;

d) measuring a performance of the gaming apparatus **(Column 8, Lines 22-24, "wager-to-prize ratio". The wager-to-prize ratio can be used as a measurement of performance in the gaming apparatus. The control means would be through the CPU which is obvious.)** ; and

e) modifying the predetermined ratio in response to the measured performance of the gaming apparatus **(The predetermined ratio in the gaming machine to measure performance is always constantly modified based on each game play by the user.)**.

Regarding claims 2, 13, Crumby discloses the measure of performance is the ratio of designed performance and the actual performance **(The wager-to-prize ratio can be interpreted to be the ratio of designed performance and the actual performance since the actual performance is the amount of money you win versus the designed performance which is the amount of money you wagered but never won back. It should also be understood that calculating performance in gaming machines is well known within the art of gaming. Casinos use player tracking cards and other methods to collect information about players, one of these types of information being performance in game machines.).**

Regarding claims 3, 14, Crumby discloses the performance is determined in dependence upon the ratio of the revenue of the gaming apparatus and the value of prizes paid by the gaming apparatus **(Column 8, Lines 22-24, "wager-to-prize ratio". The wager-to-prize ratio can be used as a measurement of performance in the gaming apparatus.)**.

Regarding claims 4, 15, Crumby discloses the modification of the ratio is proportional to the difference in designed performance and actual performance **(Refer to arguments in claim 2)**.

Regarding claims 5, 6, 16, 17, Crumby discloses the modified ratio is determined in accordance with the formula (as shown by applicant) **(Crumby does not disclose the actual formula used to calculate performance based on his wager-to-prize ratio but does not have to. The ratio is broad enough to incorporate all the terms as shown since it is common within the art of gaming to have the variables such as RTP, T, P, and Q where anyone skilled in the art of gaming can come up with this or a similar ratio to calculate performance.).]**

Regarding claims 7, 18, Crumby discloses the predetermined ratio is modified periodically **(It would be obvious that the ratio is modified periodically since the ratio of performance is based on total number of gameplayers, therefore, every game play that is played changes the performance ratio in some way.).**

Regarding claims 8, 19, Crumby discloses the predetermined ratio is modified in real time **(It would be obvious to modify the ratio in real time since the users are playing the game in real time.).**

Regarding claims 9, 20, Crumby discloses the predetermined ratio is modified in response to the occurrence of non-time based criteria **(Most games have non-based time criteria for the player and would be obvious to modify the ratio either way.)**.

Regarding claims 10, 11, 21, 22, Crumby discloses the predetermined ratio is modified within an upper or lower limit **(Most ratios inherently have an upper limit.**

When talking about game performance, one might assume that the max a player could have as far as game performance goes is 100% or the minimum would be 0%.).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas K. Cheriyan whose telephone number is 571-270-3225. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert E Pezzuto/

Supervisory Patent Examiner, Art Unit 3714